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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.E.A.No. 124 of 2006(O&M)
Date of decision:16.11.2006

Commissioner of Central Excise Commissionerate, Chandiarh

...Appellant

Versus

M/S Vimal Alloys Ltd., Amloh Road, Village Sounti Mandi,

Gobindgarh.

...Respondent

CORAM: HON'BLE MR.JUSTICE ADARSH KUMAR GOEL
HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr.Aman Chaudhary, Central Government Counsel
for the appellant.

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JUDGMENT

For the reasons stated in the application, delay in re-filing the present appeal is condoned.

This appeal has been preferred under Section 35(G) of the Central Excise Act, 1944 against the order dated 18.9.2003 passed by Customs, Excise & Service Tax Appellate Tribunal, New Delhi proposing following substantial question of law:-

> "Whether Modvat credit can be allowed on manipulated invoices where the manufacturer supplier (Sh.Anil Kumar Gupta Partner of M/S Mahabir Prasad & Co.) himself admitted in his statement that the invoices in question represented paper transaction only?"

Case of the Revenue is that the assessee was manipulating the records for availing inadmissible modvat credit. The adjudicating authority confirmed the demand of duty and also

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imposed the penalty. The Appellate Authority dismissed the appeal on account of default in making the pre-deposit. After remand by the Tribunal, the Appellate Authority found that credit was allowed to the assessee after considering the invoices to be proper. The assessee was able to prove that goods were actually received and invoices were duly stamped by the Sales Tax Barrier at Shambhoo alongwith the GR's showing payment of freight. The assessee received inputs on the basis of proper documents and the payments were made through bank. Modvat credit was taken in the year 1995 while show cause notice was issued on 8.6.1998 without recording any finding regarding supersession of fact.

Findings of the first appellate authority have been duly affirmed by the Tribunal.

The above findings that the assessee had received the goods and the invoices did not represent only paper transaction nor the invoices could be held to be manipulated, merely from the statement of Sh.Anil Kumar Gupta Partner of M/S Mahabir Prasad & Co. being pure findings of fact, having not been shown to be perverse or vitiated by non consideration or misreading of any evidence on record, we do not find any substance in the submissions of the appellant. Further, the finding of the Tribunal that the show cause notice itself was issued after about three years and was time barred, has not been challenged by proposing any question of law on that issue.

For the above reasons, we are unable to hold that any substantial question of law arises for consideration of this Court.

The appeal is dismissed.

(Adarsh Kumar Goel)
Judge

November 16,2006 **(Rajesh Bindal)**
Pka **Judge**